

(SPACE BELOW FOR FILING STAMP ONLY)

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BUSINESS
DIVISION

OCT 19 2 27 PM '76
ROBERT D. ZUMWALT
CLERK, SAN DIEGO CO.
CALIFORNIA

Defendants and
Attorneys for Cross-Complainant, CINEMATRONICS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

PAUL SAMUEL SHEPHERD,

Plaintiff,

NO. 384590

v.

CROSS-COMPLAINT FOR
DAMAGES AND RECESSION
(Conversion, Breach of
Fiduciary Duty and
Breach of Contract)

DENNIS PARTEE, JAMES PIERCE,
GARY GARRISON and CINEMATRONICS,
INC., a California corporation, and
DOES I through V, inclusive,

Defendants.

CINEMATRONICS, INC., a California
corporation,

Cross-Complainant,

v.

PAUL SAMUEL SHEPHERD, and DOES I
through X, inclusive,

Cross-Defendants.

Comes now cross-complainant, CINEMATRONICS, INC., a
California corporation, and for a cause of action against the
cross-defendants, and each of them, complains and alleges as
follows:

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FIRST CAUSE OF ACTION

CONVERSION

I

Cross-complainant, CINEMATRONICS, INC., is informed and believes and thereon alleges that cross-defendant, PAUL SAMUEL SHEPHERD, an individual is, and at all times herein mentioned was, a resident of San Diego County, California.

II

Cross-complainant is and at all times herein mentioned was, a corporation duly organized and existing under the laws of California with its principal place of business in San Diego County, California.

III

Cross-complainant is ignorant of the true names and capacities of cross-defendants sued herein as DOES I through X, inclusive. The cross-complainant therefore sues said cross-defendants by such fictitious names. The cross-complainant is informed and believes and thereon alleges that each of the cross-defendants herein designated as a DOE is responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby as hereinafter alleged.

IV

Cross-defendant, PAUL SAMUEL SHEPHERD, was at the time of all breaches hereinafter alleged a duly appointed officer of cross-complaining corporation occupying the office of Treasurer. Cross-defendant had qualified for and had accepted his offices and, had entered on and acted in such capacities and therefore

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1 owes, and at all relevant times herein mentioned did owe, a
2 fiduciary duty to cross-complainant.

3 V

4 This action is not subject to the provisions of sections
5 1812.10 and 2984.4 of the Civil Code.

6 VI

7 At all times mentioned herein, and in particular on or about
8 April, 1975 to August, 1975, cross-complainant was, and still is,
9 the owner and was, and still is entitled to the possession of the
10 following personal property, to wit: one logic board, two video
11 units, one coin box, one power supply unit, one complete video
12 game unit and other personal property.

13 VII

14 During the months of April, 1975 to August, 1975 the above-
15 mentioned property had a value which is uncertain at this time.
16 Cross-complainant will amend this Cross-Complaint and will provide
17 the exact amount when said amount becomes known to cross-
18 complainant.

19 VIII

20 Cross-complainant is informed and believes and thereon
21 alleges that during the months of April, 1975 to August, 1975,
22 cross-defendant, SHEPHERD, took the above-mentioned personal
23 property from the possession of cross-complainant and converted
24 the same to his own use. As a proximate result of said conversion,
25 cross-complainant has been damaged in a sum uncertain at this time.
26 Cross-complainant will amend the Cross-Complaint and provide the
27 exact amount when said amount becomes known to cross-complainant.

28

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IX

Between the time of cross-defendant's conversion of the above-mentioned personal property to his own personal use and the filing of this Cross-Complaint, cross-complainant has expended time and money in pursuit of the converted property, all to cross-complainant's further damage in the sum of \$2,000.00.

X

The acts and conduct of cross-defendant as herein alleged were oppressive and malicious in that cross-defendant knew the above-referred to property was the property of cross-complainant and in that cross-defendant attempted to conceal the removal of said property. Cross-complainant therefore seeks exemplary and punitive damages in the sum of \$25,000.00.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

I

Cross-complainant hereby realleges Paragraphs I through IX, inclusive of the First Cause of Action and incorporates them herein as fully set forth.

II

Cross-complainant is informed and believes and thereon alleges that during the months of April, 1975 to August, 1975 cross-defendant breached his fiduciary duty to cross-complainant by converting corporate property to his own use.

III

Cross-complainant is informed and believes and thereon alleges that cross-defendant further breached his fiduciary duty to cross-complainant by assembling much of the aforementioned

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III

An implied condition of the said oral contract was that cross-defendant would at all times during his employment for cross-complainant, owe cross-complainant a fiduciary duty and act towards cross-complainant in a loyal and good faith manner.

IV

During the months of April, 1975 to August, 1975 cross-complainant in reliance upon said oral contract, paid cross-defendant a salary of \$300 per week for 18 weeks, for a total outlay of \$5,400.00 to cross-defendant.

V

Cross-complainant is informed and believes and thereon alleges that during the months of April, 1975 to August, 1975, cross-defendant breached and was in breach of the provisions of said oral contract in that cross-defendant violated his fiduciary duty, and duty of good faith and loyalty by converting the corporate property of cross-complainant to his own use and by entering into direct competition with cross-complainant.

VI

Due to the aforementioned breaches of the above-mentioned oral contract, cross-complainant seeks rescission of the aforementioned contract and restitution of \$5,400.00 , which represents the sums cross-complainant had paid to cross-defendant in salary during the occurrence of the aforementioned breaches.

WHEREFORE, cross-complainant prays for judgment against cross-defendants, and each of them, as follows:

FOR FIRST AND SECOND CAUSES OF ACTION:

1. For the value of the property converted or,

1 property into the form of marketable video game units and then by
2 marketing said units in direct competition with cross-complainant.

3 IV

4 As a proximate result of the above-mentioned breaches of
5 fiduciary duty, cross-complainant has been injured in a sum which
6 is uncertain at this time. Cross-complainant will amend this
7 Cross-Complaint to provide the exact amount when the exact amount
8 becomes known to cross-complainant.

9 V

10 The acts and conduct of cross-defendant as herein alleged
11 were oppressive, fraudulent and malicious in that cross-defendant
12 knew the above-mentioned property was the property of cross-
13 complainant, in that cross-defendant knowingly attempted to
14 conceal the removal of said property, and in that cross-defendant
15 knowingly attempted to conceal his direct competition with
16 cross-complainant. Cross-complainant therefore seeks punitive
17 and exemplary damages in the sum of \$25,000.00.

18 THIRD CAUSE OF ACTION

19 BREACH OF CONTRACT

20 I

21 Cross-complainant hereby realleges Paragraphs I through
22 IX, inclusive, of the First Cause of Action and Paragraphs XII
23 and XIII of the Second Cause of Action and incorporates them herein
24 as though fully set forth.

25 II

26 On or about April, 1975 cross-defendant, SHEPHERD, entered
27 into an oral employment contract with defendant, JAMES PIERCE.
28 Said contract was made for the benefit of cross-complainant.

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1 if appropriate, for the value of the loss of the use of said
2 property in a sum to be averred when said sum becomes known to
3 cross-complainant;

4 2. For interest at seven percent on the foregoing sum
5 pursuant to Civil Code, Section 3336 from and after August, 1975;

6 3. For damages for time and money expended in pursuit of
7 the converted property in the sum of \$2,000.00;

8 4. For punitive and exemplary damages in the sum of
9 \$25,000.00;

10 5. For costs of suit; and

11 6. For such other and further relief as the court deems
12 just and proper.

13 FOR THIRD CAUSE OF ACTION:

14 1. For rescission of the oral contract and restitution to
15 cross-complainant of \$5,400.00;

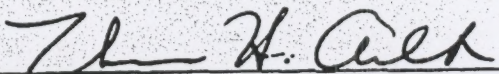
16 2. For costs of suit; and

17 3. For such other and further relief as the court deems
18 just and proper.

19 DATED: October 18, 1976

HOLT, RHOADES AND HOLLYWOOD

20
21 By:


THOMAS H. AULT
Attorneys for Cross-Complainant,
CINEMATRONICS, INC.

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ROBERT D. ZUMWALT
CLERK, SAN DIEGO CO.
CALIFORNIA

CASE NUMBER: 384590

ATTORNEY:

HOLT, RHOADES and HOLLYWOOD
1010 Second Ave., Suite 1712
San Diego, California 92101

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a and 2015.5)

I, the undersigned, say: I am over 18 years of age, employed in
(Resident/Employed)
the County of San Diego, California, in which county the within-
mentioned mailing occurred, and not a party to the subject cause. My business
(Business/Residence)
address is 1010 Second Ave., Suite 1712, San Diego, California 92101.
(No., Street) (City, State)

I served the CROSS-COMPLAINT FOR DAMAGES AND RECESSION
(Conversion, Breach of Fiduciary Duty and Breach of Contract)

of which a true and correct copy of the document filed in the cause is affixed, by placing a copy
thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee
respectively as follows:

A Mr. James E. Clark
Attorney at Law
3960 Park Blvd.
San Diego, CA 92103

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the
United States mail by me at San Diego, California, on
(City)
October 18, 1976

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 18, 1976, at San Diego
(Place)
California.

Julie Tiffany
(Signature)

PROOF OF SERVICE BY MAIL

ATTACH ORIGINAL OR TRUE COPY

VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the cross-complainant

in the above entitled action; I have read the foregoing Cross-Complaint For Damages and
Recission (Conversion, Breach of Fiduciary Duty and Breach
of Contract)

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which
are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on October 14, 1976 at San Diego, California
(date) (place)

James Pierce
JAMES PIERCE

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not
a party to the within entitled action; my business address is:

1010 Second Ave., Suite 1712, San Diego, CA

On October 18, 1976, I served the within Cross-Complaint

on the parties

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the

United States mail at San Diego, CA
addressed as follows:

Mr. James E. Clark
Attorney at Law
3960 Park Boulevard
San Diego, CA 92103

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on October 18, 1976 at San Diego, California
(date) (place)

Julee Tiffany
Julee Tiffany

Signature